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BY HAND

David H. Solomon, Esq.
Deputy General Counsel
Federal Communications Commission
1919 M Street N.W., Room 614
Washington, DC 20554

MobileMedia Corporation, et al., WT Docket No. 97-115

Dear Mr. Solomon:

We represent John M. Kealey, former Chief Operating Officer and President of MobileMedia Corporation, in connection with the above-referenced matter. Although Mr. Kealey has not been named as a party in this proceeding, he has been adversely effected by an order the Commission released on August 8, 1997, FCC 97-284 ("Order" or "August 8 Order"). Almost six months ago, on September 5, 1997, Mr. Kealey filed a Petition for Reconsideration and Modification or Clarification of that Order ("Petition"). The Commission has yet to rule on his Petition. We write to request the assistance of your office in securing a timely Commission response.¹

As Mr. Kealey's Petition details, the August 8 Order narrowly targets Mr. Kealey as a "potential wrongdoer" for purposes of MobileMedia's Second Thursday transactions. By that Order, the Commission decided to treat Mr. Kealey differently from 39 other suspected wrongdoers and, with disastrous consequences to his employability, to group him with the only two individuals who have admitted responsibility for the wrongdoing in this matter. That decision is not the result of additional fact-finding, but arises from a reinterpretation of the same factual

¹The August 8 Order is also the subject of MobileMedia's September 3, 1997 Request for Clarification ("Request") and its related February 13, 1998 letter to you soliciting assistance in "urging the Commission to act on the pending request as promptly as possible." Because the issues raised by MobileMedia's Request and Mr. Kealey's Petition are intertwined, the Commission necessarily should resolve them together.

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record² the Commission itself had earlier deemed “unclear” and not “entirely forthcoming.”³ Upon a record that cannot fairly be considered a vehicle by which the Commission could or should make even preliminary judgments about Mr. Kealey, then, the August 8 Order expresses certainty that “substantial and material” questions exist concerning Mr. Kealey’s FCC licensee qualifications. That finding has the unintended but actual effect of interfering with Mr. Kealey’s reputation and depriving him of employment within the telecommunications industry.

Although the August 8 Order effectively targets Mr. Kealey, it neglected to provide him with a meaningful mechanism by which his qualifications can be proven and resolved. Despite previously being informed that Mr. Kealey currently holds no FCC license or application and has no attributable interest in any other licensee or applicant, the Commission directed in its August 8 Order that Mr. Kealey only may resolve his qualifications in connection with a license application or in the context of an administrative hearing to be held if and when Second Thursday relief to MobileMedia is denied. The Commission, perhaps inadvertently, overlooked (1) that no hearing will take place if the Company successfully emerges under Second Thursday, and (2) that Mr. Kealey likely will never have an attributable interest in any telecommunications company in the shadow of the August 8 Order. Thus, the August 8 Order erroneously deprived Mr. Kealey of any meaningful opportunity to be heard, a deficiency that can be cured without significant fiscal or administrative burden to the Commission by granting a waiver of paragraph 8 of the Order and instituting an expedited qualifications hearing.

The need for a prompt Commission response to Mr. Kealey’s Petition recently has become far more significant. As you know, two federal class action securities lawsuits were brought against MobileMedia in late 1996 alleging violations relating to issues the Company purportedly faced in integrating two newly acquired companies. Mr. Kealey was named as an individual defendant in both actions. After commencing those actions, plaintiffs’ counsel made several requests to the FCC pursuant to the Freedom of Information Act. In response to one of those requests, on October 6, 1997, the Bureau released the October 15 Report, documents relating to that Report, and all of the pleadings in the FCC proceeding, including the August 8 Order.

² The record primarily consists of an internal investigation report that MobileMedia voluntarily disclosed to the Wireless Telecommunications Bureau (“Bureau”) on October 15, 1996 (“Report” or “October 15 Report”).

³ Indeed, by the August 8 Order, the Commission retreated from its earlier position that the factual record reflected uncertainty as to which “officers, directors, and senior managers knew about or condoned the wide-scale pattern of misbehavior.” See MobileMedia Corporation, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124, released April 8, 1997, at ¶ 10.

Thereafter, on November 21, 1997, the class action plaintiffs amended their complaint to assert securities laws violations against Mr. Kealey and others relating to MobileMedia's FCC filings. The new allegations were based on the contents of the Report and the Commission's August 8 Order. In fact, plaintiffs attached the Report to their amended complaint.

Thus, in the six months that have passed since Mr. Kealey filed his Petition, dissemination, circulation, reproduction and citation have served only to exacerbate the inequity of the Commission's unfavorable public categorization of Mr. Kealey without any meaningful opportunity to challenge it. With respect to his employability, the August 8 Order no longer casts a shadow -- it completely blocks the sun. We respectfully request your assistance in urging the Commission to act on Mr. Kealey's Petition as promptly as possible.

Very truly yours,



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